REMARKS

The rejection of claim 1 and, thus, dependent claims 4-8 under 35 USC 112, first paragraph, for reciting new matter in "... said soil rotates in unison ..." is not well taken, because this matter in original claim 1 is original disclosure and, therefore, not new. However, the matter is deleted.

The rejection of claims for misspelling "mamber" is corrected in claim 1 and not found in claim 10.

The rejection of claims 101 for embracing both product or machine and process limitations is fashionable, but insufficient, because indefinite. Nevertheless, in an effort to comply, "so that," and the like are changed to "whereby."

The rejections of independent claims 1 and 10 and, therefore, the other, dependent claims under 35 USC 103 for obviousness from the cited Wallace, III and Classen patents are traversed, because each of these claims defines a drive assembly that cooperates the soil compaction member. In particular the drive assembly includes a threaded rod threadably associated with the shaft of the auger member, with the rod being associated with the compaction member so that upon rotation of the rod the compaction member is caused to move longitudinally relative to the shaft to compact soil around the shaft.

Claims 1 and 10 of the present application specifically require the compaction member to be movable longitudinal of the shaft of the auger member, while rotation of the compaction member results in rotation of shaft and therefore insertion of the auger member in the soil surface. The above cannot be found in ay one or combination of the references.

In particular, Wallace discloses a fence post assembly including a ground engaging generally upright anchor 10 over which is inserted a post 12 of wood or vinyl. The anchor 10 includes a shaft 14 at the lower end of which is an auger blade 16. A tool 24 (Figure 3) is

used to install the anchor 10. The tool 234 is an elongated tubular handle 26. As described in line 66 of column 7 to line 6 of column 8, the handle 26 is inserted through either of the holes 18 or 20 in the shaft 14 so that a user grips the handle and causes rotation of th shaft 14 to cause the auger blade to penetrate the soil surface.

Classen describes a post assembly including a hollow post 12 that telescopically receives a spike 14 slidably fitted in the lower end of the post 12 (column 2, lines 4 to 7). The spike 14 has a flange 20 against which a tube 12 impacts to drive the spike 14 into aground surface (see column 2, line 62 to column 3, lin3 6). As particularly described the "tube 12 is manually reciprocated within limits of its travel to repeatably and forceably impact the striker plate 20 against the ground abutment plate 16 until the anchor spike 14" has been driven into the ground.

Therefore, neither reference has the drive assembly of the present invention. That is, neither has a threaded rod threadably associated with the compaction member, with rotation of the compaction member causing insertion of the auger member, and with rotation of the threaded rod moving the compaction member into engagement with the soil to compact the soil around the shaft of the auger member. This feature cannot be found in either Wallace or Classen.

For example in Wallace the auger member is inserted by the above discussed handle 26. Rotation of the compaction member (argued in the Official Action as being the flange 32 of the post 12) about the shaft of the auger member will not result in insertion of the auger member in the soil surface. The post 12 with the flange 32 cannot be used to insert the auger member. The post 12 is merely described as having a bore 22 that receives a length of the shaft 14 of the auger member. There is no description at all of there being any cooperation between the bore 22 and shaft 14. On the contrary, Figure 4 and the description at column 8,

lines 7 to 17 of Classen leads the reader to believe that rotation of the post 12 could not cause rotation of the shaft 14. The plate 32 is described at column 8 as having a central opening 32, which is clearly circular (see Figure 4). The opening 34 is described as having the same cross-section as the tubular shaft 14. Therefore in Wallace the rotation of the compaction member cannot drive the auger member.

In particular it is argued with reference to lines 14 and 16 of column 8 of Wallace that the post 12 can have a square cross-section and that the plate 32 would be also of a square configuration. This portion of the specification fails to support the argument presented in the Official Action. It is not the external cross-section of the post 12 that is the issue. It is the cross-section of the bore 22. Just because the post 12 has an outer square cross-section does not mean that the bore 22 is also of a square cross-section. Accordingly this portion of the specification fails to support the argument presented in the Official Action.

there is also confusion in this portion of Wallace. At line 17 of column 8, Wallace refers to a "post 14" when he should have referred to a "post 12".

Classen fails to overcome the above discussed shortcomings of Wallace. Classen does not have a compaction member that is rotated to insert the spike 14. On the contrary, the tube 12 of Wallace is used to impact against the plate 20 to drive the spike 14 into the ground.

Since Classen fails for the same reason as Wallace, their combination must also fail.

It would also be illogical to combine Wallace and Classen.

Wallace uses the handle 26 to insert the auger member 16 and therefore shaft 14. In contrast thereto, Classen uses impact. It would be illogical to use an impact arrangement as in Classen in the device of Wallace since clearly it would be useless to apply an impact force to the shaft 14 to try and drive the auger blade 16 into a soil surface. The reverse can be said in respect of applying Wallace to Classen.

There are even further distinctions. For example, in Classen the soil around the spike would be compacted by the plate 20 fixed to the spike 14. In contrast thereto, the arrangement of Wallace is not described as having a soil compaction portion at all. However it is argued in the Official Action the flange 32 could compact the soil. However such is not described since the post 12 is merely inserted over the shaft 14.

> **PRIOR ART MUST BER CONSIDERED IN ITS ENTIRETY, INCLUDING DISCLOSURES THAT TEACH AWAY FROM THE CLAIM** MPEP 2141.02 VI (emphasis original)

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,

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